



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

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In the matter of the request of)	
ELLANA, INC.)	
D/B/A NEW MR. SAM'S FOOD CENTER)	Business ID No. 169673
7459 Joy)	Complaint No. 1-144550
Detroit, MI)	
Wayne County)	
_____)	

At the January 12, 2012 hearing of the Michigan Liquor Control Commission
(Commission) in Southfield, Michigan.

PRESENT: Teri L. Quimby, Commissioner
Donald B. Weatherspoon, Commissioner

VIOLATION APPEAL ORDER

On November 7, 2011, Marshal Garmo, counsel on behalf of Ellana, inc. (licensee) filed a request for an appeal of the October 21, 2011 Order of Administrative Law Judge Robert H. Mourning issued as a result of a violation.

In the October 21, 2011 Order, Administrative Law Judge Mourning concluded that the licensee violated MCL 436.1801(2) on January 4, 2011 as cited in the Complaint and ordered a fine of \$900, in addition to assessing costs of \$8.04 for witness fees involved in connection with the violation hearing.

The appeal hearing was held on January 12, 2012 at the Commission's Southfield

office, and Attorney Garmo appeared on behalf of the licensee.

Counsel on behalf of the licensee argued that there are factual and procedural errors contained in the complete violation record in this case, including the date that the violation occurred and failure of the MLCC to serve a defense subpoena to the Detroit Police Department decoy witness for the September 12, 2011 violation hearing as requested by Attorney Garmo.

The Commission makes the following findings of fact:

- The Violation Report and the Detroit Police Department Crime Report both indicate the incident occurred on Tuesday, January 4, 2011 at 7:25 p.m.;
- The Violation Report lists five (5) Detroit Police Officers as witnesses, in addition to the minor Detroit Police Department decoy, all concurring the incident occurred on that date;
- The citation issued to the selling clerk indicates the incident date as January 4, 2011; and
- Administrative rule R 436.1929(2) places the burden for service of a subpoena on the person requesting issuance of the subpoena. Therefore, counsel on behalf of the licensee had that burden for service of the subpoena to the minor Detroit Police Department decoy in this case and should have served it on the Detroit Police Department

The Commission concludes that after reviewing the MLCC file and discussion of the issue on the record, the Order of Administrative Law Judge Mourning dated October 21,

2011 issued in this matter should be affirmed as the findings were based upon competent, material and substantial evidence.

THEREFORE, IT IS ORDERED that:

The Order of Administrative Law Judge Mourning dated October 21, 2011 issued in this matter is affirmed.

MICHIGAN LIQUOR CONTROL COMMISSION

Teri L. Quimby, Commissioner

Donald B. Weatherspoon, Commissioner

By its action of January 12, 2012.

Prepared by:
Terri Chase, Commission Aide